

Explanatory Memorandum to the Land Compensation Development (Wales) Order 2012.

This Explanatory Memorandum has been prepared by the Department for Environment and Sustainable Development and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the above Order. I am satisfied that the benefits outweigh any costs.

John Griffiths AM
15 March 2012

1. Description

This Order replaces (for Wales) the Land Compensation Development Order 1974 (the 1974 Order) mainly to reflect changes to the procedures for appealing against Certificates of Appropriate Alternative Development. These will in future be made to the Lands Chamber of the Upper Tribunal rather than to the Welsh Ministers.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

There are none.

3. Legislative background

Part 9 of the Localism Act 2011 amended both the planning assumptions for compulsory purchase compensation and the criteria for issuing a certificate stating what development might have received planning permission in the absence of the scheme for which the compulsory purchase order had been made. The jurisdiction for appealing against the content of such a certificate was transferred from the Welsh Ministers to the Upper Tribunal (Lands Chamber). This Order replaces the 1974 Order to reflect this.

The relevant legal powers are section 20 Land Compensation Act 1961 and sections 59 and 333 (7) of the Town and Country Planning Act 1990. Those powers are powers of the Welsh Ministers.

This Order follows the negative procedure

4. Purpose and intended effect of the Land Compensation Development (Wales) Order 2012.

i) The Land Compensation Act 1961 sets out the planning assumptions for compulsory purchase compensation. Land is valued in the “no-scheme world” where the scheme for which the compulsory order had been made is assumed to have been cancelled. As land is worth more with, or with the prospect of, planning permission, certain assumptions must be made. Any of the parties to a compulsory purchase order (but generally the claimants whose land is being taken) can apply to the local planning authority for a certificate of appropriate alternative development, which will state what permissions might have been granted in the no-scheme world. If the applicant disagrees with the content of the certificate he can appeal: formerly to the Welsh Ministers State, but in future to the Upper Tribunal.

ii) The requirements for making an application for a certificate, the time limits for issuing one and the provisions for appeals were contained in the 1974 Order. Part 9 of the Localism Act 2011 made the following changes that affected the content of this Order. The first is the jurisdiction for appeals. The second is the removal of local planning authorities’ ability to specify

conditions for the classes of planning permissions they might have granted by means of reference to published general requirements. This is no longer required because certificates of appropriate alternative development will refer to “descriptions of development” rather than “classes of development”. General requirements for conditions only have meaning when applied to classes (such as “housing” or “commercial”). “Descriptions” of development can go much wider, so general requirements for conditions could not be sensibly formulated. The Act therefore amended the enabling power for this Order so that it is no longer possible to make provision for either appeals or general requirements for conditions.

iii) It is therefore necessary to replace the 1974 Order to remove the articles on appeals and general requirements and to provide for local planning authorities to tell applicants how to appeal to the Upper Tribunal rather than the Welsh Ministers. The opportunity was also taken to make specific provision for applications to be made electronically.

5. Consultation outcome

No consultation was carried out for this instrument as it only makes changes to the 1974 Order as a consequence of the changes to the primary legislation in the Localism Act 2011.

Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment has not been completed for the following reasons

- i). the impact on business, charities or voluntary bodies is negligible.
- ii). the impact on the public sector is negligible.
- iii). the only difference for applicants for a certificate is that there is now specific provision for applications to be made electronically.
- iii). this is a procedural Order which makes minimal changes to the one it replaces, so no formal monitoring or review is necessary. A review would be undertaken if information was received about significant problems with the way the Order operated.